

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SEAN O'TOOLE, et al.,

Plaintiffs,

v.

CITY OF ANTIOCH, et al.,

Defendants.

No. C 11-1502 PJH

**ORDER STRIKING AMENDED
COMPLAINT**

On June 21, 2011, plaintiffs filed an amended complaint without the opposing parties' written consent or leave of court pursuant to FRCP 15(a)(2). Because defendants filed a motion to dismiss claims alleged in the complaint pursuant to FRCP 12(b)(6) on April 19, 2011, plaintiffs' time to amend as of right within 21 days after service of that motion has expired. FRCP 15(a)(1). The court therefore STRIKES the amended complaint as improperly filed.


However, plaintiffs' attempt to amend the complaint may suggest that plaintiffs are aware of certain deficiencies in the original complaint. Accordingly, plaintiffs may file a motion for leave to amend the complaint, or may enter into a stipulation with defendants that plaintiffs can amend the complaint. As the original complaint remains the operative complaint, defendants' motion to dismiss remain on calendar for hearing on July 27, 2011.

If plaintiffs move to amend the complaint before defendants' motion is heard, then the court would find it in the interest of judicial economy to first address the grounds for amendment, which may obviate the need to decide defendants' motion. The parties

1 shall meet and confer within ten days and attempt to agree on an approach that will
2 streamline this process.

3
4 **IT IS SO ORDERED.**

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6 Dated: June 22, 2011



PHYLLIS J. HAMILTON
United States District Judge